STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA ANN WILLIAMS,

Plaintiff-Appellant,

v

EDWARD W. SPARROW HOSPITAL ASSOCIATION d/b/a SPARROW HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
May 15, 2014

No. 315696
Ingham Circuit Court
LC No. 12-000205-NI

Before: RIORDAN, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. Because there was no genuine question that defendant had any notice of the black ice hazard, we affirm.

I. BASIC FACTS

At the time of the accident, plaintiff worked for Mead Johnson as a "neonatal academic specialist." As part of her employment, she made numerous trips to Sparrow Hospital in Lansing. On March 11, 2011, plaintiff, arrived at Sparrow for a 9:00 a.m. appointment with one of its neonatologists and parked in the cancer center parking lot in one of the spots designated "Deliveries." After parking, plaintiff exited her vehicle and walked around to the passenger side to get the baby formula she was bringing for the doctor. But when she reached her passenger door, she abruptly fell to the ground. Even after falling, plaintiff was unable to see what caused her to fall. She felt around and felt the presence of ice, which she estimated to cover two feet by two feet in area. Plaintiff noted that it was sunny out and there was no snow anywhere on the parking deck.

Plaintiff suffered extensive damage to her knee as a result of her fall and filed the instant premises liability action against defendant. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the danger was open and obvious and even if it were not open and obvious, there was no evidence that defendant had notice, constructive or otherwise, of the danger. Even though the trial court concluded that the danger was not open and obvious, it granted the motion because it agreed that defendant had no notice of the presence of the black ice.

II. ANALYSIS

We review a trial court's decision on a motion for summary disposition made under MCR 2.116(C)(10) de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Wilson v Alpena Co Rd Comm'n*, 474 Mich 161, 166; 713 NW2d 717 (2006). The motion is properly granted if the evidence shows that there is no genuine issue regarding any material fact and that the moving party is entitled to judgment as a matter of law. *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013).

"In a premises liability action, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages." *Benton v Dart Props, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006). The specific duty that a landowner owes to those who enter the landowner's land is determined by the status of the visitor. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). Michigan recognizes three traditional categories of visitors: trespasser, licensee, and invitee. *Id.* Plaintiff alleged that she was an invitee, and defendant accepted this premise for the purposes of its motion for summary disposition. Thus, we will treat plaintiff as an invitee for purposes of the motion as well. "With regard to invitees, a landowner owes a duty to use reasonable care to protect invitees from unreasonable risks of harm posed by dangerous conditions on the owner's land." *Hoffner v Lanctoe*, 492 Mich 450, 460; 821 NW2d 88 (2012) (footnote omitted).

But a landowner only owes an invitee a duty to protect if the landowner has actual notice of the hazard or if the landowner would have discovered the hazard with the exercise of reasonable care. *Id.*; *Stitt*, 462 Mich at 597. Here, there is no evidence to show that defendant had actual knowledge of the patch of ice. Thus, the dispositive inquiry is whether defendant had constructive notice of the hazard. A landowner's constructive notice of a condition is established if, from the evidence, the condition is of such a character, or has existed for a sufficient length of time, that the landowner should have had knowledge of it. *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001). But circumstantial evidence that weather conditions were conducive to producing ice does not allow a reasonable inference that a defendant had constructive notice of the ice. *Altairi v Alhaj*, 235 Mich App 626, 640; 599 NW2d 537 (1999).

Here, there was no evidence submitted that would allow a reasonable juror to conclude that defendant should have discovered the patch of black ice with the exercise of reasonable care. As the trial court noted, it would not be reasonable to expect a defendant to inspect every square inch of its many parking lots/decks in the search for virtually invisible hazards. Moreover, plaintiff's own testimony establishes that there was nothing to indicate the presence of the ice; she stated that there was absolutely no visible snow or ice on the parking deck. This is important because the presence of snow has been found to put people on notice that there could be unseen ice nearby. See, e.g., *Royce v Chatwell Club Apartments*, 276 Mich App 389, 394; 740 NW2d 547 (2007); *Ververis v Hartfield Lanes (On Remand)*, 271 Mich App 61, 65; 718 NW2d 382 (2006); *Joyce v Rubin*, 249 Mich App 231, 239-240; 642 NW2d 360 (2002); *Kaseta v Binkowski*, unpublished opinion per curiam of the Court of Appeals, issued July 12, 2007 (Docket No.

273215) (Whitbeck, J., dissenting), adopted in 480 Mich 939 (2007). As such, there was nothing to prompt any additional inspections to search for virtually invisible ice that was unknown to exist.

We note that plaintiff's reliance on the testimony of David Peck, defendant's maintenance supervisor, is misplaced. Peck testified that the parking deck in question has been known to accumulate ice along its south edges *when snow is plowed up along that edge*. Peck explained that the built-up snow can later melt and cause ice to form nearby. However, at the time of the incident, there was no snow plowed along that edge; thus, the ice-forming condition that defendant was aware of was not present.

Therefore, because there was no evidence to support a conclusion that the black ice was "of such a character or has existed a sufficient length of time," such that defendant should have had knowledge of it, *Clark*, 465 Mich at 419, the trial court did not err in granting summary disposition on this ground.

Affirmed. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood